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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,254	11/26/2003	David J. Yonce	279.628US1	6063
21186	7590	04/26/2006	EXAMINER	
SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.			OROPEZA, FRANCES P	
P.O. BOX 2938			ART UNIT	
MINNEAPOLIS, MN 55402			PAPER NUMBER	
			3766	

DATE MAILED: 04/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/723,254	Applicant(s) YONCE ET AL.	
	Examiner Frances P. Oropeza	Art Unit 3766	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11/26/03 (Initial Filing).
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>5/9/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 6 is vague because “when the heart range is within a specific range”, is not clear. For examination purposes the limitation is read as --when the heart rate range is within a specific range--.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-7 and 9-16 are rejected under 35 U.S.C. 102(e) as being anticipated by Levine et al. (US 6748274). Levine et al. disclose a method and apparatus for displaying information comprising an implantable device (10), the implantable device comprising a first sensing channel (82 or 84) and a controller (60). The method and apparatus further comprises an external programmer (102) including a display (video display (214) and printer (236)) to show graphical

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data (waveform or histogram). The electrocardiogram data is compiled with respect to time and with respect to heart rate. Events are time stamped/ marker (figs. 2, 3, 5, 8- 11B; col. 5 @ 33-45; col. 7 @ 7-16; col. 9 @ 1-12; col. 10 @ 60-62; col. 12 @ 53-54; col.13 @ 59-61; col.14 @ 16-18, 31-34; col. 15 @ 5-12; col. 16 @ 17-19).

As to claim 2 and 13, the representative electrogram is an average of a plurality of electrograms and is a function of time/ heart rate (col. 14 @ 31-34; col. 15 @ 5-13; col. 15 @ 67 – col. 16 @ 3).

As to claims 3 and 12, the representative electrogram is a single electrogram and is a function of time/ heart rate (col. 12 @ 42-47; col. 14 @ 31-34; col. 15 @ 5-13).

As to claims 4 and 14, the representative electrograms are intrinsic electrograms and are a function of time/ heart rate (col. 13 @ 55-57; col. 14 @ 31-34; col. 15 @ 5-13).

As to claim 5 and 15, the representative electrograms are evoked responses from the evoked response window, collected as paces, and are functions of time/ heart rate (col. 4 @ 3-6; col. 7 @ 42; col. 15 @ 5-13; col. 15 @ 67 – col. 16 @ 3).

As to claims 6 and 9, the representative electrograms may be continuous relative to time and period, and are derived as a function of time/ heart rate (col. 15 @ 5-13; col. 15 @ 67 – col. 16 @ 3).

As to claim 7 and 16, the display screen (214) or the printer (236) displays the representative electrocardiogram (fig.5).

As to claim 10, the controller maintains representative electrograms in memory, with the oldest representative electrogram being discarded (col. col. 14 @ 63-67).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 8 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Levine et al. (US 6748274) in view of Palmer et al. (US 5830150). As discussed in paragraph 3 of this action, Levine et al. disclose the claimed invention except for the graphic display having the magnitude of the electrogram displayed in shading or color.

Palmer et al. teach data display using a graphic display having the magnitude of the electrogram displayed in shading or color for the purpose of highlighting changes in the condition of the patient. It would have been obvious to one having ordinary skill in the art at the time of the invention for the graphic display to have the magnitude of the electrogram displayed in shading or color in the Levine et al. system in order to for the caregivers to become more

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easily aware of striking events and more subtle events, the caregiver's eyes being drawn by the colors to the variable at the time of its change so appropriate care can be provided for the patient's changing condition (col. 1 @ 52-55; col. 3 @ 6-18; col. 4 @ 1-26; col. 5 @ 1-23).

Drawings

6. The drawings are objected to because some of the limitations are hand drawn and are not clear. The submission of formal drawing are suggested when the application is allowed.


Claims Objections

7. Claim 12 is objected to because of the sentence ends with two periods. Appropriate correction is required.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fran Oropeza whose telephone number is (571) 272-4953. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert E. Pezzuto can be reached on (571) 272-6996. The fax phone numbers for the organization where this application or proceeding is assigned is (571) 273-8300 for regular communication and for After Final communications.

Frances P. Oropeza
Patent Examiner
Art Unit 3766


Robert E. Pezzuto
Supervisory Patent Examiner
Art Unit 3766